



# RULE-MAKING ORDER

CR-103P (May 2009)  
(Implements RCW 34.05.360)

Agency: Employment Security Department

Permanent Rule Only

Effective date of rule:

Permanent Rules

☒ 31 days after filing.

☐ Other (specify) \_\_\_\_\_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?  
☐ Yes ☒ No If Yes, explain:

**Purpose:** The rules primarily convert existing policy to rule, update and readopt rules in chapters with appropriate subject matter headings, and delete obsolete references. Those rules that reflect new or revised policies are intended to provide staff and the public with guidance as to how eligibility for unemployment benefits will be determined in specific situations.

Citation of existing rules affected by this order:

Repealed: See attached.

Amended: See attached.

Suspended:

Statutory authority for adoption: RCW 50.12.010, 50.12.040, and 50.20.010

Other authority :

## PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 10-06-084 on March 1, 2010 (date).

Describe any changes other than editing from proposed to adopted version: WAC 192-150-150 is amended for clarifying language related to changes in work and local labor market. The definition of "preponderance of evidence" in WAC 192-100-065 is revised to mirror the definition developed through case law. WAC 192-170-080 is modified to include the words "due to a lack of work" following the word "layoff" for purposes of clarity. It is also modified to state that a disciplinary suspension from work will be treated as a suspension rather than a leave of absence.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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Date adopted:

May 5, 2010

NAME (TYPE OR PRINT)

Paul Trause

SIGNATURE

TITLE

Deputy Commissioner

## CODE REVISER USE ONLY

CODE REVISER'S OFFICE  
STATE OF WASHINGTON

12,000

TIME

9:37

WSR

10-11-046

AM

PM

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

<b>Federal statute:</b>	New	_____	Amended	_____	Repealed	_____
<b>Federal rules or standards:</b>	New	_____	Amended	_____	Repealed	_____
<b>Recently enacted state statutes:</b>	New	_____	Amended	_____	Repealed	_____

**The number of sections adopted at the request of a nongovernmental entity:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted in the agency's own initiative:**

New	<u>49</u>	Amended	<u>16</u>	Repealed	<u>32</u>
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	<u>49</u>	Amended	<u>16</u>	Repealed	<u>32</u>
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Pilot rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Other alternative rule making:</b>	New	<u>49</u>	Amended	<u>16</u>	Repealed	<u>32</u>


Attachment to CR103P

Repealed Rules

WAC 192-12-142  
WAC 192-12-151  
WAC 192-12-153  
WAC 192-12-154  
WAC 192-12-155  
WAC 192-12-160  
WAC 192-12-170  
WAC 192-12-173  
WAC 192-12-365  
WAC 192-16-004  
WAC 192-16-005  
WAC 192-16-009  
WAC 192-16-015  
WAC 192-16-016  
WAC 192-16-025  
WAC 192-16-030  
WAC 192-16-050  
WAC 192-16-055  
WAC 192-17-010  
WAC 192-23-001  
WAC 192-23-011  
WAC 192-23-012  
WAC 192-23-051  
WAC 192-23-052  
WAC 192-23-081  
WAC 192-23-082  
WAC 192-23-091  
WAC 192-23-113  
WAC 192-23-301  
WAC 192-23-320  
WAC 192-23-350  
WAC 192-23-900

Attachment to CR103P

Amended Rules

~~WAC 192-110-050~~ 

WAC 192-130-060

WAC 192-130-065

WAC 192-130-070

WAC 192-140-005

WAC 192-140-010

WAC 192-140-100

WAC 192-150-150

WAC 192-180-010

WAC 192-180-013

WAC 192-180-015

WAC 192-180-025

WAC 192-200-005

WAC 192-200-030

WAC 192-230-020

WAC 192-250-045

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

**WAC 192-130-060 Notice to employer.** (1) Whenever an individual files an initial application for unemployment benefits, a notice will be mailed to:

(a) The claimant's last employer, and

(b) Any prior employer ~~((from whom the claimant has a potentially disqualifying separation where there is insufficient subsequent employment to purge a separation disqualification. An individual will be presumed to have a potentially disqualifying separation when:~~

~~(i) For claims with an effective date prior to January 4, 2004, it has been less than seven weeks or the individual has not earned at least seven times his or her weekly benefit amount since the job separation, or~~

~~(ii) For claims with an effective date January 4, 2004, and later,)) where it has been less than ten weeks since the job separation or the individual has not earned at least ten times his or her weekly benefit amount since the job separation.~~

(2) Whenever an individual files an initial application for unemployment benefits and a benefit year is established, the department will mail a notice ~~((will be mailed))~~ to all base year employers. This notice to base year employers will include information on wages reported and benefit charging related information and will request an employer response if the wage information is incorrect or if the employer wishes to request relief of benefit charging.

(3) Whenever an individual files an initial application for unemployment benefits, the department will mail a notice ~~((will be mailed))~~ to any separating employer as provided in WAC 192-320-075. This notice will include information that the employer may be liable for all benefits paid on the claim as provided in RCW 50.29.021 (2)(c).

(4) Whenever an individual files an additional claim for benefits (reopens an existing claim after subsequent employment), the department will mail a notice ~~((will be mailed))~~ to the last employer reported by the claimant and to any prior employer from ~~((who))~~ whom the claimant has a potentially disqualifying separation who has not previously been notified.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

**WAC 192-130-065 Mailing addresses for notice to employer.**  
The department will mail notices to employers required by RCW 50.20.150 and WAC 192-130-060 (~~((will be mailed))~~) as follows:

(1) The department will mail the notice to the last employer of the claimant (~~((will be mailed to the address provided by the claimant. However, an alternative mailing address may be used in the following circumstances))~~) as follows:

(a) If the employer has notified the department (~~((has been notified))~~) that the employer is represented for unemployment insurance purposes by an employer representative or cost control firm, the department will mail the notice to the last employer (~~((may be mailed))~~) directly to that firm; or

(b) If an employer has (~~((notified))~~) provided the department (~~((that unemployment claim notices should be mailed to a specified))~~) with a mailing address, the department will mail the notice to the last employer (~~((may be mailed))~~) directly to that address; or

(c) If the employer has not provided the department with a mailing address, the department will mail the notice to the last employer to the address provided by the claimant.

(2) The department will mail the notice to any base year employer who has reported wages to the department (~~((will be mailed))~~) to the employer's mailing address of record provided by the employer for tax purposes.

(3) The notice to any other employer from whom the claimant has a potentially disqualifying separation (without sufficient subsequent employment to purge a separation disqualification) will be mailed to the address provided by the claimant.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

**WAC 192-130-070 Mailing of eligibility determinations--RCW 50.20.180.** (1) The department will mail an eligibility (~~((determination))~~) decision based on a job separation issue (~~((will be mailed))~~) to the following:

(a) The last employer, if the claimant was separated from employment for reasons other than lack of work;

(b) A previous employer from whom the claimant has a potentially disqualifying separation as provided in WAC 192-130-060 if the claimant was separated from employment for reasons other than lack of work;

(c) (~~((For claims with an effective date prior to January 4, 2004, to any employer since the beginning of the claimant's base year who provides information that the claimant was discharged for a felony or gross misdemeanor connected with the work,~~

~~(d) For claims with an effective date of January 4, 2004 or later,))~~ To any employer since the beginning of the claimant's base year who provides information that the claimant was discharged for gross misconduct connected with the work, or whose wage credits are deleted from the claimant's record as a result of the claimant's gross misconduct.

(2) The department will mail an eligibility ((determination)) decision based on an issue other than a separation from employment ((will be mailed)) to an employer if the employer provides relevant information ((relating to)) about the claimant's eligibility for a specific week.

**AMENDATORY SECTION** (Amending WSR 99-08-073, filed 4/5/99, effective 5/6/99)

**WAC 192-140-005 Filing weekly claims for benefits.** (1) **How do I file my weekly claim for benefits?** You may file your claim by ~~((placing a telephone call to))~~ calling the department's unemployment information and weekly claims line, using the department's internet web site, or filing a paper claim. ~~((The department can approve other methods of filing a weekly claim in individual circumstances.))~~

(2) **When do I file my claim?** You must file a claim for every week for which you want to be paid or have counted as your waiting week. Every week begins at 12:01 a.m. on Sunday and ends at midnight on Saturday. You must file your claim ~~((must be filed))~~ after the end of the week(s) you are claiming.

(a) File your telephone or internet claim after 12:01 a.m. Sunday, but before 5:00 p.m. on Friday, following the week you are claiming. (In case of a legal holiday, file your claim before 5:00 p.m. on the last working day of the week.)

(b) If you file by ~~((mail))~~ paper, file your claim anytime Sunday through Saturday following the week you are claiming. If you file by mail, your claim is considered filed on the postmarked date. If you file by fax, your claim is considered filed on the date of receipt.

(3) **How often do I file my claim?** File your claim weekly. The department may approve other filing schedules in cases of emergency or in unusual circumstances.

(4) **What happens if I miss a week?** If you do not claim a week, you ~~((will have to contact the unemployment claims telecenter to))~~ must reopen your claim. See WAC 192-110-050.

(a) If you have not yet received your first payment, you may claim benefits for one week prior to the week in which you contact the telecenter to reopen your claim.

(b) If you have received your first payment and not more than four consecutive weeks have elapsed since you last filed a claim, you may claim benefits for any of the four weeks prior to the week in which you contacted the telecenter to reopen your claim.

(c) Except as described in (a) and (b) of this subsection, we will consider unclaimed weeks late. The department will not pay you for these weeks unless you show good cause for not contacting the telecenter earlier to reopen your claim.

(5) **What information do I have to report?** Your claim must include:

(a) The Saturday date of the week you are claiming;

(b) Answers to the questions:

(i) The telecenter cannot process a claim filed by telephone ~~((cannot be processed))~~ or internet unless all questions are



answered;

(ii) The department will process a claim filed in writing ~~((will be processed))~~ if at least one question is answered and other information required by this subsection (5) is provided, but your eligibility for benefits will be in question and you will be asked to provide complete information, which could result in a denial of benefits;

(c) Your personal identification number if filing by telephone or internet, or your signature if you filed your claim in writing;

(d) The amount and source of any pension you are receiving for the week claimed;

(e) Any holiday earnings received during the week claimed;

(f) Any vacation pay received during the week claimed, including the dates for which payment was received, if applicable; and

(g) Any earnings and the number of hours you worked during the week claimed.

(6) What happens if I don't provide this information? The department cannot process a telephone or internet claim that does not meet the requirements of subsection (5) ~~((cannot be processed))~~ of this section and you will receive ~~((verbal))~~ instructions to contact ~~((your))~~ the unemployment claims telecenter. A written claim that does not meet these requirements is incomplete and the department will ~~((be returned))~~ return it to you with a request for additional information.

~~((7) What happens if I file my claim late?~~

~~((a) Until you receive your first payment, your claim is late if it is filed more than seven days (one week) after the Saturday of the week being claimed. You will not be paid for these weeks unless you can prove you had a good reason for filing late.~~

~~((b) After you have received your first payment, your claim is late if it is filed more than 28 days (four weeks) after the Saturday of the week being claimed. Any week that is filed late may be conditionally paid. This means you will be paid benefits, but you will be asked to prove you had a good reason for filing late. If you cannot do so, you will receive a notice directing you to repay benefits for the week(s) you filed late.))~~

AMENDATORY SECTION (Amending WSR 99-08-073, filed 4/5/99, effective 5/6/99)

**WAC 192-140-010 Personal identification number.** (1) The first time you call the unemployment information and weekly claims line to obtain information about your claim or to file a weekly claim for benefits, you must ~~((establish))~~ set up a personal identification number (PIN). This number is your electronic signature on all claims filed by telephone and its use is equivalent to your signature on written forms.

(2) Security of the PIN is your responsibility. You are responsible for any payments made as a result of the use of this PIN unless you provide evidence showing that the individual using your PIN was not authorized to do so. Your PIN must be reset if you forget ((your PIN)) it or if someone else, including an employee of the department, learns your PIN((, it must be reset)). You are responsible for either contacting the unemployment claims telecenter to ((establish)) set up a new PIN or setting up a new PIN using the department's internet site.

AMENDATORY SECTION (Amending WSR 07-22-055, filed 11/1/07, effective 12/2/07)

**WAC 192-140-100 What happens if I do not respond to a request for information about a discharge from work?** (1) If you do not respond to a request for information about a discharge from work and if you:

(a) Have not given the department enough information to identify or contact the employer, the department will presume the employer discharged you for misconduct connected with ((the)) your work. The department will deny benefits ((will be denied)) under RCW 50.20.066.

((If you)) (b) Have given the department enough information to contact the employer, the department will not deny benefits ((will not be denied)) unless ((the employer shows by)) a preponderance of evidence shows that you were discharged for misconduct connected with your work or the separation was for another disqualifying reason.

(2) ((This)) If benefits are denied due to misconduct, the denial is for an indefinite period of time and will continue ((until you meet the requalification provisions of RCW 50.20.066)) for ten weeks and until you earn ten times your weekly benefit amount in employment that is covered by Title 50 RCW.

AMENDATORY SECTION (Amending WSR 07-22-055, filed 11/1/07, effective 12/2/07)

**WAC 192-150-150** When is a separation considered a refusal of new work? (1) Section 3304 (a) (5) of the Federal Unemployment Tax Act and RCW 50.20.110 state that you cannot be denied benefits if you refuse to accept new work when the wages, hours, or other working conditions are substantially less favorable than those prevailing for similar work in your local labor market.

(2) For purposes of this chapter, "new work" includes an offer by your present employer of:

(a) Different duties than those you agreed to perform in your current employment contract or agreement; or

(b) Different terms or conditions of employment from those in the existing contract or agreement.

(3) When ~~((your employer changes your pay, hours, or conditions of work in a manner that does not constitute good cause under RCW 50.20.050(2), the department will decide if the change is an offer of new work. If it is, the department will also decide if the new work is substantially less favorable than similar work in your local labor market))~~ you resign rather than accept changes in working conditions that are different from those under which you had been working, the department will decide whether you left work voluntarily or refused an offer of new work.

(a) If the changes in working conditions are not substantial, the department will consider you to have voluntarily quit work.

(b) If ~~((the department decides the))~~ there is a substantial change in working conditions so as to constitute ~~((s))~~ an offer of new work and the change is not authorized or implied by the original employment agreement, ~~((and the new work is substantially less favorable,))~~ the department will treat the separation as a layoff due to lack of work and adjudicate ~~((the issue of))~~ the refusal of new work under RCW 50.20.080.

(i) ~~((The department will adjudicate the refusal of new work even if you have not claimed benefits for the week in which you refused the new work, and~~

~~((ii) The employer offering the new work is an interested party to the work refusal decision.~~

(b) ~~If the department decides the change is not an offer of new work, or the new work is not substantially less favorable, it will adjudicate the separation from work as a voluntary quit under RCW 50.20.050(2) or a discharge under RCW 50.04.294, as appropriate.~~

~~((4))~~ If the ~~((employer reduces))~~ change in working conditions is a reduction in your pay or hours ~~((by))~~ of ten percent or less, the department will presume ~~((that it is not substantially less favorable and adjudicate the separation under RCW 50.20.050(2) or~~

~~a discharge under RCW 50.04.294, as appropriate)) the change is not substantial.~~ You can overcome this presumption by providing additional information to the department ~~((that shows))~~ showing the job was not suitable ~~((as provided in))~~ under RCW 50.20.110.

~~((+5)) (ii) If you continue working ((for your employer)) after ((being notified of the change(s) in)) your working conditions have changed, ((the department will consider that you have agreed to the new terms and conditions of employment and have accepted the offer of new work. If you)) but later quit work because of these changes, the department will ((consider that)) presume you ((have)) voluntarily left work for personal reasons. This ((provision)) does not apply when;~~

~~(A) You give notice of your intent to quit ((work upon being notified of the change(s) in working conditions and simply)) but continue to work during an agreed upon notice period((. In addition,)); or~~

~~(B) You ((may)) continue working during an employer-provided grievance or arbitration period in response to the change in working conditions ((without the department considering that you have accepted the new work)).~~

~~((+6)) (iii) This subsection does not apply when the change in working conditions was caused by your own misconduct. The department will treat your refusal of the new working conditions as a separation from work under RCW 50.20.050 or 50.20.066.~~

(c) If the department decides you were separated due to a layoff but you refused an offer of new work, the department will issue a written decision even if you do not claim benefits for the week in which the refusal occurred. The employer offering the new work is an interested party to the work refusal decision.

(4) For purposes of this section, the following definitions apply:

(a) "Conditions of work" includes fringe benefits such as life and health insurance; paid sick, vacation, and annual leave; provisions for leaves of absence and holiday leave; pensions, annuities and retirement provisions; and severance pay. It also includes job security and reemployment rights; training and promotion policies; wage guarantees; unionization; grievance procedures; work rules, including health and safety rules; medical and welfare programs; physical conditions such as heat, light and ventilation; shifts of employment; and permanency of work.

(b) "Prevailing" means the most typical or customary in a particular occupation for a given area. The department will decide if a wage rate is prevailing for your labor market area based on information provided by its labor market and economic analysis branch.

(c) "Similar work" means similarity of the operations performed, the skill, ability and knowledge required, and the responsibilities involved.

(d) "Substantial change in working conditions" means a material change that is significant in terms of amount, degree, or impact as opposed to a change that is relatively minor or trivial. A change in working conditions is not substantial if the conditions prevailing after the change are those generally prevailing for

other workers performing the same or similar work in your local labor market area.

(e) "Substantially less favorable" means the work is materially reduced below the standard under which the majority of individuals in your occupation and local labor market area customarily work(~~(, or the work would have a significantly unfavorable impact on you)~~).

AMENDATORY SECTION (Amending WSR 07-22-055, filed 11/1/07, effective 12/2/07)

**WAC 192-180-010 Job search requirements--Directives--RCW 50.20.010 (1)(c) and 50.20.240. (1) Do I have to look for work?** You must be actively seeking work unless you are:

(a) Attached to an employer as defined in WAC 192-180-005(1); or  
(b) Participating in a training program approved by the commissioner.

(2) **When should I start my job search?** You must look for work every week that you file a claim for benefits, unless you are exempt under subsection (1) of this section.

(3) **What are my weekly job search requirements?**

(a) At a minimum, you must:

(i) Make job search contacts with at least three employers each week; or

(ii) Participate in three approved in-person job search activities at the WorkSource office or local employment center, or any combination of employer contacts or in-person job search activities for a total of three.

(b) Based on your individual circumstances, such as your occupation, experience, or labor market area, the department may issue you a directive requiring more than three employer contacts or job search activities each week.

(c) If you are a member of a referral union you must be registered with your union, eligible for and actively seeking dispatch, and comply with your union's dispatch or referral requirements (see WAC 192-210-120). Your benefits may be denied for any weeks in which you fail to meet these requirements and you may be directed to seek work outside of your union.

(4) **What is a "job search contact"?** A job search contact is a contact with an employer to inquire about or apply for a job. You may use job search methods that are customary for your occupation and labor market area, including in-person, telephone, internet, or telefax contacts. The work applied for must be suitable (see RCW 50.20.100) unless you choose to look for work in a lower skill area. A contact does not count if it is made with an employer whom you know is not hiring, or if the department decides the contact is designed in whole or in part to avoid meeting the job search requirements. Simply posting your resume on-line (for example, Monster.com or Craigslist) does not constitute a job search contact for purposes of this section; an application or contact with an employer for a specific job must be submitted to count as one of the required weekly job search contacts.

(5) **What is an "in-person job search activity"?** This is an activity provided through the WorkSource office or local employment

center that will assist you in your reemployment efforts. It includes, but is not limited to, job search workshops, training classes, or other facilitated services provided by WorkSource staff and approved by the local WorkSource administrator. For claimants residing in Washington state, an in-person job search activity must be documented in the department's services, knowledge and information exchange system (SKIES) to qualify. For interstate claimants, the activity must be documented in the one-stop system in the state in which you reside.

(6) **What is a directive?** A directive is a written notice from the department telling you that specific methods of job search are required in order to meet the job search requirements. A written directive need not have been issued to deny benefits for failure to meet the job search requirements in subsection (3) of this section.

(7) **When is a directive issued?** The department can issue a directive to clarify or to increase the job search requirements you must meet. Examples include, but are not limited to, cases in which you need to:

- (a) Increase the number of employer contacts each week;
- (b) Change your method of looking for work (such as from resumes to in-person contacts);
- (c) Expand the geographic area in which you look for work; or
- (d) Look for work in a secondary occupation.

(8) **When is the directive effective?** The directive is effective when it is given in writing by the department. It stays in effect until a new written directive is given, or it is rescinded in writing.

AMENDATORY SECTION (Amending WSR 05-19-018, filed 9/9/05, effective 10/10/05)

**WAC 192-180-013** What are the job search requirements for individuals who work less than full time? (1) "Partially unemployed" workers are those individuals:

- (a) Who were hired to work full time((7));
- (b) Whose weekly hours of work have been temporarily reduced ((to less than full time)) by their employer((7)) by no more than sixty percent;
- (c) Who earn less than one and one-third times their weekly benefit amount plus five dollars during a week((7)); and
- (d) Who are expected to return to full time work for their employer within four months.

The department considers these workers ((are considered)) to be employer attached and they are not required to register for or seek work. They must be available for all work offered by their regular employer.

(2) "**Part time**" workers are individuals who normally work less than full time, or who take a job that is less than full time. To

be eligible for benefits, these individuals must be available for and actively seeking full time work and the department may review their job search at any time. If they get a part time job, they must continue to look for full time work or we will deny their benefits under RCW 50.20.010 (1)(c). This definition of "part time" workers means individuals who work part time but do not meet the requirements of RCW 50.20.119.

(3) **"Part time eligible"** workers are individuals who have worked no more than ((17)) seventeen hours in any week of their base year. They are eligible for benefits under RCW 50.20.119. These individuals may look for work of ((17)) seventeen or fewer hours per week and the department may review their job search at any time. Once an individual gets a job for ((17)) seventeen or fewer hours per week, he or she is employer attached and no longer required to look for work.

AMENDATORY SECTION (Amending WSR 07-22-055, filed 11/1/07, effective 12/2/07)

**WAC 192-180-015 Tracking job search activities--RCW 50.20.240.** (1) **Do I need to keep track of my job search activities?** You must keep a record or log of your job search contacts and the in-person job search activities you receive through the WorkSource office or local employment center unless you are:

- (a) A member of a full referral union;
- (b) Allowed benefits because you left work to protect yourself or a member of your immediate family from domestic violence or stalking as provided in RCW 50.20.050 (2)(b)(iv); or
- (c) Exempt from job search requirements under WAC 192-180-010(1).

(2) **What information do I need to keep in the log?** Your job search log must contain at least the following information:

(a) For in-person or telephone job search contacts, record the date contact was made; the employer's name, address and telephone number; ((the type of)) how contact was made (in-person, telephone, etc.); the name or position of the person you contacted; and the type of work you applied for. If application was made on-line, by newspaper or other means in which there is no direct employer contact, include date, web address, or newspaper name or address, the job applied for, such as a job reference number, or attach a copy of the job announcement or a confirmation notice received after your application was submitted;

(b) For in-person job search activities at the WorkSource office or local reemployment center, record the date contact was made; and a description of the services you received or the activities in which you participated.

(3) **Is there a specific form I must use?** The department will



supply you with a form (EMS 10313) to use in tracking your job search activities. You may use your own form or tracking method as long as you record all information required by this section.

(4) **How long should I keep my log?** Keep your log for at least sixty days after the end of your benefit year or thirty days after receiving your final payment on any extension of benefits, whichever is later.

AMENDATORY SECTION (Amending WSR 07-22-055, filed 11/1/07, effective 12/2/07)

**WAC 192-180-025 Job search review interviews.** (1) **What is a job search review (JSR) interview?** The JSR is an interview between you and a representative of the WorkSource office or local employment center. Its purpose is to review your job search documentation, identify any barriers to your reemployment, develop a plan for resolving barriers that may be identified, and provide advice on how to improve your job search efforts. For interstate claimants, this interview may be conducted by telephone or by the local employment center in a contracted state.

(2) **Will my job search activities be reviewed?** Yes, you must bring your job search log to the interview. The interviewer will review your log with you and discuss areas in which your job search can be improved. The employer contacts and job search activities included in your log will be verified at random. The interviewer may further verify any reported contacts at his or her discretion.

(3) **How many weeks will be reviewed?** ~~((a))~~ The interviewer will review at least one week of your job search documentation at the initial interview. If the job search documentation is unsatisfactory, ~~((or))~~ the department will reschedule you for a second interview in which we will review your documentation for all weeks claimed.

(4) **What happens if I don't attend the initial JSR interview?** If you fail to ~~((appear for))~~ attend the initial JSR interview ~~((without being excused, you will be scheduled for a second interview in which all weeks claimed will be reviewed.~~

~~((b)) If you are excused from attending the initial JSR interview,)) and you have an:~~

~~((a)) Excused absence, WorkSource staff will reschedule you ~~((will be rescheduled))~~ for a review of one week of your job search documentation.~~

~~((+)) When may I be excused from attending the initial JSR?))~~ You may be excused from attending the initial JSR interview only for the following reasons:

~~((a))~~ (i) Jury duty;

~~((b))~~ (ii) National Guard duty;

~~((c))~~ (iii) Natural disaster or acts of nature; or

~~((d))~~ (iv) Verifiable employment or a job interview.

(b) Unexcused absence, the following will apply:

(i) The department will schedule you for an interview in which we will review your job search activities for all weeks claimed; and

(ii) The department will deny your benefits for the week of the initial interview unless you can show good cause for not attending. (See WAC 192-180-030.)

(5) **What does "all weeks" mean?** For purposes of this section, "all weeks" means the latest of the following:

(a) Weeks claimed since you filed your application for benefits; or

(b) Weeks claimed since your last JSR interview, if applicable.

(6) **Do I need to bring anything else to the JSR interview?** You must be prepared to present proof of your identity during the JSR interview. ~~((This includes))~~ Acceptable documents are:

(a) State or government issued ~~((photo))~~ driver's license or identification card with photo; ((or))

(b) ~~((Two of the following government-issued documents:))~~ U.S. passport (expired or unexpired);

(c) Permanent resident card or alien registration receipt card (Form I-551);

(d) Unexpired employment authorization document, with photo;

(e) School identification card with photo;

~~((+i))~~ (f) Voter's registration card;

~~((+ii))~~ (g) U.S. military identification card or draft record;

~~((+iii))~~ (h) Military dependent's identification card;

~~((+iv))~~ (i) U.S. Coast Guard merchant mariner card; or

~~((+v))~~ (j) Native American tribal document ((or

~~(vi) U.S. Social Security card;~~

~~(vii) Certification of birth abroad issued by the U.S. Department of State;~~

~~(viii) Original or certified copy of a birth certificate;~~

~~(ix) U.S. citizen ID card;~~

~~(x) ID card for use of resident citizen in the United States;~~  
or

~~(xi) Unexpired employment authorization document issued by the United States citizenship and immigration services (USCIS)).~~

AMENDATORY SECTION (Amending WSR 07-23-129, filed 11/21/07, effective 1/1/08)

**WAC 192-200-005 Disqualification of students--RCW 50.20.095.**

(1) **General rule.** If you are registered in a course of study that provides scholastic instruction of twelve or more credit hours per week, you are disqualified from receiving benefits or credit for your waiting week.

(2) **Period of disqualification.** The disqualification starts with the week the instruction begins or the week you left employment to return to school, whichever is earlier. The disqualification ends at midnight on Saturday of the week prior to the first full week in which you are no longer registered for twelve or more hours of instruction. You must certify to the department that you are not currently registered for twelve or more credit hours and will not be registered for twelve or more credit hours for at least sixty days. If you begin classes within sixty days, all benefits paid since the date of your certification will be considered an overpayment. This overpayment is subject to recovery under RCW 50.20.190. If you are registered for classes that begin more than sixty days in the future, you will not be disqualified under this subsection.

(3) **Disqualification not applicable.** The disqualification does not apply if you:

- (a) Are in approved training under RCW 50.20.043;
- (b) Are in an approved self-employment assistance program under RCW 50.20.250; or
- (c) Show by a preponderance of the evidence that your student status does not significantly interfere with your actual availability for work when you apply.

(4) **Definitions.** As used in this section:

- (a) "School" includes primary schools, secondary schools, and institutions of higher education as defined in RCW 50.44.037;
- (b) "Scholastic instruction" includes all teaching or opportunity for learning subjects other than those of a strictly vocational nature. Subjects of a vocational nature are those embraced in the definition of "training" contained in WAC 192-200-010.

(c) "Twelve or more hours per week" means 12 or more credit hours per week or its equivalent((-

~~(d) "Preponderance of evidence" means evidence sufficient to persuade a reasonable person considering all the evidence that the proposal is more probably true than not true)).~~

(5) **Students.** Students who claim benefits are subject to all of the provisions of Title 50 RCW including:

- (a) RCW 50.20.050 dealing with those who leave work voluntarily without good cause;

(b) RCW 50.20.010 (1)(c) requiring claimants to be able and available for and actively seeking work; and

(c) RCW 50.20.240 requiring claimants to provide evidence of their job search activities as requested by the department.

AMENDATORY SECTION (Amending WSR 07-23-129, filed 11/21/07, effective 1/1/08)

**WAC 192-200-030 May I receive unemployment benefits while I am in training?** (1) To be eligible for unemployment benefits while in training, you must meet the following criteria:

(a) The training must be full-time as defined by the training facility but subject to the discretion of the commissioner, including skills training classes designated as full-time by the local WorkSource administrator; and

(b) You must be making satisfactory progress in training. Except as provided in ~~((subsection))~~ (c) of this subsection, "satisfactory progress" is defined in WAC 192-270-065; or

(c) If you are enrolled in an approved self-employment assistance program under RCW 50.20.250, "satisfactory progress" means you are attending classes and participating in other activities related to setting up a business within the ~~((timeframes))~~ time frames outlined in your approved training plan.

(d) The certification that you are making satisfactory progress in full-time training must be signed by the registrar or equivalent person designated by the training facility.

(2) You must notify the department if you discontinue or suspend training, change your course of study, or reduce enrollment to less than full-time.

(3) If your enrollment drops below full-time or you are not making satisfactory progress, you may be required to show that you are meeting the availability for work and job search requirements of RCW 50.20.010 (1)(c) and 50.20.240, and the provisions of RCW 50.20.080 regarding failure to apply for, or refusal to accept suitable work.

AMENDATORY SECTION (Amending WSR 07-23-128, filed 11/21/07, effective 1/1/08)

**WAC 192-230-020 How are cash payments and offsets applied to my overpayment?** (1) If the department has assessed more than one overpayment against you, we will first apply payments against any overpayment involving fraud. If there are multiple overpayments involving fraud, we will apply payments in order beginning with the oldest benefit year. If none of the overpayments involve fraud, we will apply payments in order beginning with the oldest benefit year.

(2) Within the priority established in subsection (1) of this section, the department will apply cash payments to the outstanding balance in the following order:

- (a) Court costs.
- (b) Interest.
- (c) Penalties based on fraud.
- (d) Overpaid benefits.
- (e) Surcharge assessed under RCW ((~~41.14.027~~)) 40.14.027.

(3) The department will only apply offsets to the overpaid benefits. Court costs, fraud penalties, interest, and surcharges cannot be offset; they must be repaid.

AMENDATORY SECTION (Amending WSR 09-13-057, filed 6/12/09, effective 7/13/09)

**WAC 192-250-045 Who is not eligible for participation in the shared work program?** (1) The following employees are not eligible for participation in the shared work program:

(a) Employees paid on any basis other than hourly wage. This includes, but is not limited to, employees paid on a piece rate, mileage rate, job rate, salary, or commission basis. The commissioner may waive this provision for employees paid on a piece rate basis if an hourly rate of pay can be established.

(b) Officers of the corporation that is applying for participation.

(2) The following businesses are not eligible for participation in the shared work program:

(a) Businesses with a tax rate of (~~more than~~) 5.4 percent or more, not including the social cost factor rate and taxes under RCW 50.24.010 and 50.24.014.

(b) Nonqualified employers, meaning employers who have reported no payroll for four consecutive quarters.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 192-12-142	Claims, appeals, petitions--Filing not to be refused.
WAC 192-12-151	Benefit payments--Not a determination of allowance.
WAC 192-12-153	Payment of benefits--Initial allowance--Employer appeal.
WAC 192-12-154	Payment of benefits by appeals tribunal--Claimant appeal.
WAC 192-12-155	Payment of benefits by commissioner--Petition to court.
WAC 192-12-160	Withdrawals from trust fund.
WAC 192-12-170	Unemployment compensation administration fund.
WAC 192-12-173	Federal programs--Maintenance of regulations and guidelines.
WAC 192-12-365	Interpretive regulation--Definition of suitable work as it applies to agricultural labor.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 192-16-004	Interpretive regulation--Benefit year--Further defining initial separation from employment--RCW 50.04.030.
WAC 192-16-005	Interpretative regulations--Applications for initial determinations--Backdating--RCW 50.04.030.
WAC 192-16-009	Disqualification for leaving work voluntarily--Meaning of good cause for claims with an effective date prior to January 4, 2004--RCW 50.20.050(1).
WAC 192-16-015	Leaving work for marital or domestic reasons--RCW 50.20.050 (1)(d).
WAC 192-16-016	Satisfying disqualification under RCW 50.20.050 (1)(d) when separation is for reasons of marital status and marriage occurs after date of separation.
WAC 192-16-025	Lump sum retirement payment.
WAC 192-16-030	Interpretive regulation--Computation of pension deductions under RCW 50.04.323.
WAC 192-16-050	Diversion of unemployment benefits to satisfy child support obligations.
WAC 192-16-055	Interpretive regulations--Special coverage provisions--Bona fide notification of intent for substitute teacher--RCW 50.44.050(1).



REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 192-17-010

Exemption from provisions of WAC  
197-10-800.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 192-23-001	Failure to respond to request for information results in a presumption of disqualifying information.
WAC 192-23-011	Failure to provide details of employment.
WAC 192-23-012	Failure to provide details on holiday and/or vacation pay.
WAC 192-23-051	Failure to provide details on separation from employment.
WAC 192-23-052	Failure to respond to a request for information regarding voluntary quit.
WAC 192-23-081	Failure to provide details on a refusal of an offer of work.
WAC 192-23-082	Failure to respond to a request for information regarding failure to apply for work.
WAC 192-23-091	Failure to respond to a request for information regarding labor dispute.
WAC 192-23-113	Failure to respond to a request to provide information regarding athletic employment.
WAC 192-23-301	Failure to respond to a request for information regarding reasonable assurance of return to work.
WAC 192-23-320	Failure to respond to a request for documentation of a systematic and sustained work search.
WAC 192-23-350	Failure to respond to a request for pension information.
WAC 192-23-900	Claimant liable for repayment of overpayments caused by conditional payment.

#### NEW SECTION

**WAC 192-100-055 Nondisclosure and willful nondisclosure--RCW 50.20.160.** (1) "Nondisclosure" is not a synonym for fraud or misrepresentation. It refers to situations in which you have information or knowledge which you fail to disclose to the department inadvertently or through oversight. The department may redetermine an allowance of benefits resulting from nondisclosure at any time within two years following the benefit year in which the allowance was made.

(2) "Willful nondisclosure" means you fail to disclose information when you knew or should have known that it was material. The department may redetermine an allowance of benefits resulting from willful nondisclosure at any time.

#### NEW SECTION

**WAC 192-100-060 Labor dispute.** A labor dispute means a deliberate action by two or more individuals or by an employer resulting in a strike or lockout where wages, hours, working conditions, or terms of employment are at issue.

#### NEW SECTION

**WAC 192-100-065 Preponderance of evidence defined.** "Preponderance of evidence" is that evidence which, when fairly considered, produces the stronger impression, has the greater weight, and is the more convincing as to its truth when weighted against the evidence in opposition thereto.

#### NEW SECTION

**WAC 192-100-070 Conditional payments.** (1) A conditional payment is payment issued to you after you have already received benefits but during a period in which the department questions your

continued eligibility for benefits. Your right to retain such payment is conditioned on the department's finding that you were eligible for benefits during the week(s) in question.

(2) You are no longer considered to be in continued claim status if you have not claimed benefits (had a break in claim) for four weeks or longer.

(3) A conditional payment is not considered a "determination of allowance" as provided in RCW 50.20.160(3).

#### NEW SECTION

**WAC 192-110-090 Prompt payment of benefits.** The department will promptly issue payment once it determines that you are eligible for benefits.

(1) An appeal by an employer concerning your eligibility for benefits will not prevent payment.

(2) If benefits are allowed to you as the result of an appeal decision, the department will promptly pay benefits and a petition for the commissioner's review will not prevent payment.

(3) If benefits are allowed to you as the result of a commissioner's decision, the department will promptly pay benefits and the filing of a petition for judicial review will not prevent payment.

(4) If benefits are allowed to you as the result of a court decision, the department will promptly pay benefits. An appeal to a court of higher jurisdiction will not prevent payment.

#### NEW SECTION

**WAC 192-110-095 May I backdate my application for unemployment benefits (RCW 50.04.030)?** (1) **General rule.** A benefit year begins on Sunday of the calendar week in which you file your application for benefits. However, an application may be backdated for good cause or for the convenience of the department.

(2) **Definitions.** As used in this section:

(a) "Good cause" means factors that would prevent a reasonably prudent person in similar circumstances from filing an application for benefits. These include, but are not limited to, acting on advice directly from a department employee or its agent on whom a reasonable person would rely, incapacity due to illness or injury, or other serious factors.

(b) "For the convenience of the department" means those situations where it is difficult or impossible for the department to accept a timely application. These include, but are not limited to, equipment breakdowns, lack of available staff to accept applications, or special handling requirements.

(3) **Limitations on good cause.**

(a) You must file your application for benefits during the first week in which those factors that constitute good cause are no longer present. The effective date will be Sunday of such week.

(b) Backdating will not be allowed if you claim good cause based on information from department staff or agents where you

could reasonably be expected to question the accuracy of this information, and you knew or should have known of your redetermination or appeal rights and failed to exercise them.

#### NEW SECTION

**WAC 192-110-110 Establishing a new benefit year--RCW 50.04.030.** Once your current benefit year expires, you are not eligible for a new benefit year unless you have returned to work and earned at least six times the weekly benefit amount on your new claim.

Example: You separate from one job on December 29, 2008, and from a second job on February 7, 2009. You file an application for benefits effective February 8, 2009. When the benefit year ends, you must have earned six times your new weekly benefit amount since February 7, 2009, to be eligible for a new claim.

#### NEW SECTION

**WAC 192-110-150 May I have an individual with power of attorney or other authorization file an initial or weekly claim for benefits, testify in my place, or otherwise certify on my behalf?** No. RCW 9A.72.085 requires that an oath, certification, verification or declaration must be signed or sworn to by the person making it. (Exception: An estate executor or administrator may file a claim for the last completed calendar week prior to a claimant's death.)

(1) You are required to personally certify on your initial application for benefits and weekly claims that the information provided to the department is correct.

(2) An individual with power of attorney may not testify in your place in any adjudicative proceeding. Such individual may file an appeal on your behalf if he or she provides the department with a copy of the document granting him or her power of attorney. Such individual may also be called as a witness on your behalf or assist with the preparation of your case but you must provide sworn testimony in support of your appeal.

(3) An agent with power of attorney may not otherwise act on your behalf when statutes or regulations specifically or implicitly require your signature or personal certification.

#### NEW SECTION

**WAC 192-140-035 What happens if I do not respond to a request for information?** (1) The department will presume that you are disqualified from benefits if you provide potentially disqualifying information, or fail to provide necessary information, and then do not respond to a request for specific information. The department will deny benefits under RCW 50.20.010.

(2) This denial is for an indefinite period of time and will continue until you provide the requested information.

(3) Once you provide the requested information, the department may issue a redetermination under RCW 50.20.160. The department will issue a new decision allowing benefits if you provide enough information to establish your eligibility for benefits.

#### NEW SECTION

**WAC 192-140-040 What happens if I do not provide details about my employment when filing my weekly claim?** (1) The department will presume you are not unemployed under RCW 50.04.310 if you:

(a) Report that you had work and earnings for one or more weeks;

(b) Fail to provide employer name and address; and

(c) Do not respond to a request for information.

(2) Further, the department will presume you are not unemployed under RCW 50.04.310 if:

(a) You report that you will have earnings for a week not yet claimed;

(b) Subsequently claim benefits for the week without providing employer name and address and the amount of earnings; and

(c) Do not respond to a request for information.

(3) The department will deny benefits under this section based on RCW 50.20.010. This denial applies only to the week(s) in which work and earnings information is incomplete.

#### NEW SECTION

**WAC 192-140-045 What happens if I do not respond to a request for information about a refusal of an offer of work?** (1) If you do not respond to a request for information about a refusal of an offer of work, the department will presume you refused an offer of suitable work without good cause.

(2) The department will deny benefits under RCW 50.20.080. This denial will continue for seven weeks and until you earn seven times your weekly benefit amount in employment that is covered by Title 50 RCW.

#### NEW SECTION

**WAC 192-140-050 What happens if I do not respond to a request for information about failure to apply for work?** (1) The department will presume you failed to apply for suitable work without good cause if:

(a) You have been directed by the department to apply for work;

(b) The department is advised that you have failed to comply as directed; and

(c) You do not respond to a request for information.

(2) The department will deny benefits under RCW 50.20.080. This denial will continue for seven weeks and until you earn seven times your weekly benefit in employment that is covered by Title 50 RCW.

#### NEW SECTION

**WAC 192-140-055 What happens if I do not respond to a request for information about a labor dispute?** (1) The department will presume you are unemployed as a result of a labor dispute and directly interested in or participating in the dispute if you do not respond to a request for information about a labor dispute.

(2) The department will deny benefits under RCW 50.20.090. This denial will continue until you provide the requested information.



## NEW SECTION

**WAC 192-140-095** What happens if I do not respond to a request for details about my separation from work? (1) If you report work and earnings in one week and during the week following you do not report work and earnings, you must provide details about your separation from work.

(2) The department will presume you have voluntarily quit work without good cause under RCW 50.20.050 unless you provide:

(a) Complete employer information, including:

(i) Name of employer;

(ii) Complete address of employer;

(iii) Hours worked and earnings if not previously reported; and

(iv) Last day worked.

(b) Details about the reasons for separation from work.

(3) A separation from employment occurs whenever the employer-employee relationship is severed. For purposes of this section, a separation occurs when:

(a) You are not scheduled to work for a period of one week or more; or

(b) You have a week with no earnings following a week in which you had earnings.

(4) The department will deny benefits under RCW 50.20.050. This denial will continue for seven weeks and until you earn seven times your weekly benefit in employment that is covered by Title 50 RCW.

## NEW SECTION

**WAC 192-140-105** What happens if I do not respond to a request for information about a voluntary quit from work? (1) If you do not respond to a request for information about a voluntary quit from work the department will presume you have voluntarily quit work without good cause under RCW 50.20.050, unless available evidence shows that your separation from work was for another reason.

(2) If benefits are denied as a voluntary quit, the denial will continue for seven weeks and until you earn seven times your weekly benefit in employment that is covered by Title 50 RCW.

#### NEW SECTION

**WAC 192-140-130 What happens if I do not respond to a request for information about holiday or vacation pay?** (1) The department will presume you are not unemployed as provided in RCW 50.04.310 if you report that you received holiday or vacation pay and the amount paid, and do not respond to a request for specific information about the holiday or vacation pay.

(2) If you report that you will have holiday or vacation pay for a week not yet claimed and subsequently claim benefits for the week without providing employer name and address and the amount of payment, and do not respond to a request for information, the department will presume you are not unemployed as provided in RCW 50.04.310.

(3) The department will deny benefits under RCW 50.20.010. This denial applies only to the week(s) in which holiday or vacation pay information is incomplete.

#### NEW SECTION

**WAC 192-140-135 What happens if I fail to respond to a request for information about athletic employment?** (1) If your eligibility for benefits is based on employment as a participant in sports or athletic events and you do not respond to a request for information, the department will presume you have reasonable assurance of performing similar services in the upcoming season.

(2) The department will deny benefits under RCW 50.20.113. This denial applies to the entire period between sporting seasons.

#### NEW SECTION

**WAC 192-140-140 What happens if I fail to respond to a request for information about reasonable assurance to return to work in educational employment?** (1) If your eligibility for benefits is based on services to an educational institution, your employer has provided information that you have reasonable assurance of returning to work after the school holiday or break, and you do not respond to a request for information about reasonable assurance, the department will presume that such assurance exists.

(2) The department will deny benefits under RCW 50.44.050. This denial applies to the period between academic years or terms, and during holiday or vacation periods.

NEW SECTION

**WAC 192-140-145 What happens if I do not respond to a request for pension information?** (1) The department will presume you are receiving a pension in an amount greater than your weekly benefit amount and contributed to only by a base period employer if:

(a) You report that you have applied for a retirement pension or your pension has changed since your last claim; and

(b) You do not respond to the question concerning pension information when filing your weekly claim.

(2) The department will deny benefits under RCW 50.04.323. This denial will continue until you provide the information showing that you are not ineligible for benefits under RCW 50.04.323.

#### NEW SECTION

**WAC 192-150-145 Change in working conditions covered by RCW 50.20.050 (2)(b)(v) through (x).** (1) If you quit work due to a change in working conditions that meets the requirements of RCW 50.20.050 (2)(b)(v) through (x), the department will not deny benefits solely on the basis that you continued working for a brief period of time following the change. However, you must demonstrate to the department that the change in working conditions was the motivating factor for quitting work.

(2) "Brief period of time" means the amount of time a reasonably prudent person would have continued working after the change in circumstances.

#### NEW SECTION

**WAC 192-150-225 Examples of flagrant and wanton misconduct.**

(1) Examples of behaviors that may constitute flagrant and wanton conduct resulting in a finding of gross misconduct include, but are not limited to:

(a) A medical provider under the influence of illegal narcotics while at work;

(b) A health care worker who steals money or valuables from patients;

(c) A commercial truck driver under the influence of alcohol while operating the employer's vehicle;

(d) A school employee convicted of conduct that requires the individual to register as a sex offender;

(e) An attorney convicted of conduct that results in being disbarred or suspended from the practice of law; or

(f) A department store employee who secretly films or photographs customers in the store's fitting rooms.

(2) These behaviors are examples only and do not require the department to find gross misconduct in similar situations.

NEW SECTION

**WAC 192-150-230 What happens if I am discharged prior to the effective date of my resignation?** (1) Except as provided in subsection (2) of this section, if you notify your employer that you are resigning from your job and the employer discharges you prior to the end of the notice period, the separation is treated as a discharge. The department will not deny benefits unless the employer can show that you were discharged for misconduct.

(2) If your employer pays you through the notice period but requires no work, the separation is treated as a quit. The separation date is the last day of the notice period. Payment for the notice period is deductible from benefits as payment in lieu of notice.

## NEW SECTION

**WAC 192-170-010 Availability for work--RCW 50.20.010.** (1) In general, the department will consider you available for work if you:

(a) Are willing to work full-time, part-time, and accept temporary work during all of the usual hours and days of the week customary for your occupation.

(i) You are not required to be available for part-time or temporary work if it would substantially interfere with your return to your regular occupation.

(ii) The requirement to be available for full-time work does not apply under the circumstances described in WAC 192-170-050 (1)(b) or 192-170-070;

(b) Are capable of accepting and reporting for any suitable work within the labor market in which you are seeking work;

(c) Do not impose conditions that substantially reduce or limit your opportunity to return to work at the earliest possible time;

(d) Are available for work during the hours customary for your trade or occupation; and

(e) Are physically present in your normal labor market area, unless you are actively seeking and willing to accept work outside your normal labor market.

(2) You are not considered available for work if you fail or refuse to seek work as required in a directive issued by the department under WAC 192-180-010.

## NEW SECTION

**WAC 192-170-065 Suitable work factors--Agricultural labor--RCW 50.04.150 and 50.20.100.** When deciding whether agricultural labor is suitable work for you, the department will consider the degree of risk involved to your health, safety, and morals, your physical fitness, your skill level, your length of unemployment and prospects for work in your customary occupation, the distance of the available work from your residence, and other factors pertinent to your ability to perform the work.

## NEW SECTION

**WAC 192-170-080 Leave of absence.** (1) A leave of absence is an absence from work mutually and voluntarily agreed upon by you and your employer or a collective bargaining agent, or leave to which you are entitled under federal or state law, where the employer-employee relationship is continued and you will be reinstated in the same or similar job when the leave expires.

(a) If you are on a leave of absence, you are not unemployed and thus not eligible for benefits.

(b) If you choose not to return to work when the leave of absence ends, the separation is treated as a voluntary quit. The separation date will be the first working day after the leave expires.

(c) If no job is available with the employer when the leave of absence ends, the separation is treated as a layoff due to a lack of work.

(d) If you have been on medical leave and are released for work by your medical provider, but your employer refuses to permit you to return to work, you are considered to be laid off due to a lack of work and potentially eligible for benefits.

(2) A leave of absence does not exist if the employer offers you only a preference for rehire or a promise of a job if work exists at the end of the leave. An employee-initiated leave that only provides fringe benefits during the leave or preferential status for reemployment is not a leave of absence but a voluntary quit.

(3) A temporary or indefinite disciplinary suspension from work by the employer is not a leave of absence. The department will treat this as a suspension.

## NEW SECTION

**WAC 192-170-090 Incarceration.** (1) If you were previously warned that your continued employment was in jeopardy because of poor attendance, and you engage in illegal activities where you are aware there is a clear possibility of arrest and detention, misconduct may be established under RCW 50.04.294 (2)(d) or (e).

(2) If you are jailed but later released without having been charged with or convicted of a crime, the separation is not considered misconduct except as provided in subsection (3) of this section.

(3) If your employer discharges you for absenteeism or job abandonment because you failed without good cause to notify the employer of your incarceration or anticipated release date, such failure may be considered misconduct.

(4) You will be considered unavailable for work during any days in which you are incarcerated unless those days are not part

of your regular work week based on your occupation. Example: You are sentenced to a specific time in custody but allowed to serve your time on weekends. If weekends are not part of your regular work week, you will be considered available for work.

#### NEW SECTION

##### **WAC 192-170-100 AmeriCorps and AmeriCorps VISTA volunteers.**

(1) AmeriCorps volunteers enroll with nonprofit organizations to provide services within the state. They may enroll in full-time or part-time programs. If you enroll in a part-time program, you can seek and accept other work. You are potentially eligible for benefits if you are immediately available for and seeking full-time work.

(2) AmeriCorps VISTA (volunteers in service to America) volunteers are assigned to public or private organizations to work towards meeting community needs. The contract requires they be available for service each day and evening of the week. AmeriCorps VISTA volunteers are not available for work. You are not eligible for benefits while under contract, even if you received benefits prior to enrollment in service.

(3) Stipends received as an AmeriCorps or AmeriCorps VISTA volunteer are not covered employment. They may not be used to requalify for benefits after a denial for a quit, discharge, or job refusal.



## Chapter 192-190 WAC

### DEDUCTIONS FROM UNEMPLOYMENT BENEFITS

#### NEW SECTION

**WAC 192-190-010 Income tax withholding.** (1) You may request to have federal income tax withheld from your benefits. If you choose to do so, the department will deduct the withholding at the percentage specified in 26 U.S.C. Section 3402(p)(2). You may cancel this withholding at any time.

(2) Benefits deducted for income tax purposes are considered paid to you. If you are paid benefits to which you are not entitled, the amount withheld for income tax will be included in the overpayment.

#### NEW SECTION

**WAC 192-190-015 Deductions for child support--RCW 50.40.050.**

(1) After being properly notified by a child support agency, the department will withhold a portion of your benefits to send to the agency to satisfy child support obligations.

(2) **Notification.** The child support agency is responsible for notifying you of the order to deduct child support from your unemployment benefits.

(3) **Overpayments.** Benefits deducted to satisfy child support obligations are considered paid to you. If you receive benefits to which you are not entitled, the amount deducted to satisfy child support obligations will be included in the overpayment.

(4) **Benefits withheld in error.** The child support agency is responsible for reimbursing you if the amount deducted from your benefits is greater than you are required to pay to satisfy your child support obligations. If an amount less than you are required to pay is deducted from your benefits, the department will deduct the additional amount from future benefit weeks.

(5) **Appeals.**

(a) You must file your appeal concerning the validity of the child support order, the total amount due, or the amount to be deducted from your benefits, with the child support agency.

(b) You may file your appeal concerning the department's authority to deduct child support from your benefits, the weeks for which the deduction is made, and the accuracy of the amount deducted with the department in the same manner as eligibility decisions are appealed. You may file your appeal based on the department's notice to you that child support obligations have been or will be deducted from your benefits. All laws and rules pertaining to benefit appeals apply to appeals under this subsection.

(6) **Effective date of deduction.** The department will not deduct child support obligations from benefits paid for weeks prior to the date on which notification is served on you by the child support agency.

#### NEW SECTION

**WAC 192-190-020 Are lump sum retirement payments deductible from my benefits (RCW 50.04.323)?** Lump sum retirement benefits are deductible from benefits as provided in this section.

(1) Lump sum retirement payments are prorated over the individual's life expectancy as determined by Title I in Regulation 1.72-9 of the Internal Revenue Code. The percentage contributed by the employer to the retirement will be prorated over the individual's life expectancy to determine the amount deducted from benefits.

(2) After a job separation, the withdrawal of only the funds and applicable interest contributed by the individual to a retirement pension is not deductible from benefits.

(3) The transfer or rollover of a lump sum retirement payment within sixty days of receipt to another long-term retirement plan, such as an individual retirement account (IRA), or 401K is not deductible from benefits.

#### NEW SECTION

**WAC 192-190-025 How is the pension deduction calculated?** (1) The share contributed by the employer to the pension is deductible from benefits. The amount of the deduction equals the percentage of the contribution(s) made by the base year employer as of the last pay period in the base year in which the contribution(s) was made. The department will prorate the employer's share to a weekly amount.

(a) The department will presume the services you provided to the employer in the base year affected eligibility for or increased

the pension amount unless you provide verification from the employer or the pension fund administrator showing otherwise.

(b) The department will presume you made no contribution to the pension unless you provide evidence satisfactory to the department that such a contribution was made.

(2) A disability pension based entirely on the percentage of disability is not deductible. For example, disability payments paid by the Veterans Administration (VA) based on extent of injury are not deductible.

(3) Retirement benefits paid by the Social Security Administration are not deductible from benefits.

(4) For purposes of this section, "pension" includes retirement benefits or retired pay, annuity, or other similar periodic payment.

#### NEW SECTION

**WAC 192-190-030 Is reimbursement of expenses deductible from my benefits?** (1) Moneys paid to you as reimbursement for expenses are not deductible from benefits. However, there must be a reasonable relationship between the amount paid and the actual expenses incurred. If the amount paid is greater than actual expenses, the entire amount must be reported to the department as remuneration and may be deducted from your weekly benefit amount.

(2) Examples:

(a) A volunteer firefighter is paid twenty-five dollars for each fire call. The amount is considered reimbursement for the costs associated with responding to the fire call, such as travel expenses. You are not required to report the reimbursement to the department when filing your claim.

(b) A volunteer firefighter is paid fifty dollars per week even if he or she has no fire calls during that week. The amount is considered remuneration because there is no relationship between the payment and the costs associated with service as a firefighter. You must report the payments to the department when filing your claim.

#### NEW SECTION

**WAC 192-190-035 Vacation or holiday pay.** (1) You must report vacation and holiday pay when filing your claim for benefits.

(2) If vacation or holiday pay is assigned to a specific time period by your employer or as part of a collective bargaining agreement, the department will deduct it from your benefits.

(3) If you receive a cash out of accrued vacation leave, it is not deductible from benefits.

#### NEW SECTION

**WAC 192-190-040 Back pay and settlements.** (1) "Back pay" means wages paid to a worker for a prior pay period. An employer may award back pay to a separated or suspended employee for a specific period of time.

If you received benefits for any weeks for which back pay is awarded, you must report the amount of the back pay to the department.

(a) If the employer does not deduct the amount owed before giving you the award, you will receive an overpayment notice and must pay the amount owed to the department.

(b) If the employer deducts the amount of benefits owed before giving you the back pay award, the employer must pay the amount owed to the department.

(2) A back pay award may not be used to purge a disqualifying separation.

A lump sum payment of worker's compensation benefits does not constitute a back pay award for purposes of RCW 50.20.160.

(3) A "settlement" is the resolution of a dispute or lawsuit under specific terms, often financial. The department will treat a settlement due to loss of wages the same as a back pay award.

#### NEW SECTION

**WAC 192-190-045 Severance pay.** When payment for your separation from work is assigned to any period before the date of separation, it is considered severance pay. Severance pay is not deductible from benefits.

#### NEW SECTION

**WAC 192-190-050 Termination pay.** (1) Termination pay is the same as earnings and is deductible from benefits. It means payments that are assigned to and have a connection with the period following the last day you worked but before you are separated from employment. The payments may be connected to a specific period of

time by collective bargaining agreement, individual contract or hiring agreement, customary trade practice, or your request.

(2) Your employer may place conditions for receiving payments, such as requiring that you be available for work during the payment period as needed or stopping payment before the payment period ends if you get another job.

Example 1: The employer provides a job security plan which pays full salary and benefits for five months after the layoff date. The employees are on-call to work as needed for the employer. These payments are deductible because the payments are conditioned on your agreement to remain on-call.

Example 2: An employment contract provides for payments for up to two years following layoff, based on years of service. Fringe benefits continue during the period and accrued vacation time may be used to extend the length of the payments. Payments are deductible because there is a clear connection between the payments and the time period following the last day of work based on the continuation of fringe benefits such as vacation leave.

#### NEW SECTION

**WAC 192-190-055 Payment in lieu of notice.** (1) If you have a contract or hiring agreement that requires the employer to give you advance notice of termination, and the employer fails to do so, the payments you receive from the employer for wages or salary you would have earned during the notice period are deductible from benefits.

(2) If you give notice to the employer to quit work, and the employer discharges you before the end of the notice period, any wages paid to you through the end of the notice period are deductible from benefits.

#### NEW SECTION

**WAC 192-190-060 Bonuses.** (1) If a bonus is attributable to work you performed during a week in which you claimed benefits, the amount paid is deductible from benefits.

Example: You work twenty hours a week and receive partial unemployment benefits. Based on productivity for that week, your employer awards a fifty dollar cash bonus to workers. The fifty dollars is deductible from benefits.

(2) If a bonus is not attributable to work you performed during a week claimed, it is not deductible from benefits.

Example: You work eight months for an employer and are then

laid off. At the end of the year, your employer pays each worker a bonus of one hundred dollars for each month worked during the calendar year. You receive eight hundred dollars based on your eight months of work. Because the bonus is attributable to work performed before you separated from your job, it is not deductible from benefits.

(3) A bonus includes, but is not limited to, cash payments and other things of value that are over and above the employment contract or hiring agreement.

#### NEW SECTION

**WAC 192-190-065 Tips.** Tips are considered earnings and must be reported each week you claim benefits. They are deductible from benefits.

#### NEW SECTION

**WAC 192-190-070 Jury duty--RCW 50.20.117.** (1) Payment received because you are on-call or reporting as a prospective juror, or serving on a jury, is earnings and deductible from benefits.

(2) Payment received as reimbursement of expenses for travel, meals, and other costs associated with jury duty is not deductible from benefits.

#### NEW SECTION

**WAC 192-190-075 Sick leave pay.** (1) You must report sick leave pay when filing your claim for benefits.

(a) If sick leave pay is assigned to a specific time period by your employer or as part of a collective bargaining agreement, it is deductible from benefits.

(b) If you receive a cash out of accrued sick leave, it is not deductible from benefits.

(2) If your benefits are reduced because you reported sick leave pay, they will not be further reduced because you were not able to work on the day(s) for which you were on paid sick leave.

Example: You are sick for three days during a week. You receive sick leave pay for two of those days. Your benefits will

be reduced for those two days by the amount of sick leave paid to you. Your benefits will be reduced by one-seventh under RCW 50.20.130 for the third day because you were not able to work.

#### NEW SECTION

**WAC 192-190-080 Disability payments.** (1) Disability payments paid to you by an insurance company based on premiums paid by the employer are not earnings and are not deductible from benefits.

(2) Disability payments paid to you from a trust fund paid solely by the employer's contributions are earnings and are deductible from benefits.

#### NEW SECTION

**WAC 192-190-085 Work study.** (1) The Higher Education Act (Public Law 102-325, Title IV) prohibits the deduction of federal financial aid, including work study, from benefits. If the financial aid award includes both federal and state moneys, it is not deductible from benefits.

(2) Earnings from work programs that require services in exchange for student financial aid are deductible from benefits unless Title IV funds are included in the award.

(3) Federally subsidized programs, such as the Workforce Investment Act, do not include Title IV funds. Students provide services to an employer who reports income for tax purposes. These earnings are deductible from benefits.

(4) Other forms of financial aid, such as grants or loans, which do not require the performance of services, are not deductible from benefits.

#### NEW SECTION

**WAC 192-190-090 National Guard pay.** You must report earnings if you are in the National Guard or military reserve and are on active duty more than seventy-two consecutive hours. Earnings for active duty that exceeds seventy-two consecutive hours are deductible from benefits.

NEW SECTION

**WAC 192-190-100 AmeriCorps stipends.** (1) Stipends received for participation as an AmeriCorps volunteer are considered payment for services and are deductible from benefits. Moneys received for education-related expenses, such as tuition and books, are not deductible from benefits.

(2) If you work a part-time job, your earnings from the part-time job are deductible from benefits. See also WAC 192-170-100.



NEW SECTION

**WAC 192-210-001 Which educational employees are subject to RCW 50.44.050?** (1) Except as provided in subsection (2) of this section, the provisions of RCW 50.44.050 apply to services performed in the employ of an educational institution or institution of higher education operated by:

- (a) The state;
- (b) A political subdivision of the state;
- (c) A nonprofit organization or unit; or
- (d) An Indian tribe.

(2) (a) The provisions of RCW 50.44.050 do not apply if you are employed by a subsidiary business or organization owned or operated by an educational institution when:

(i) The primary purpose of the subsidiary business or organization is other than educational;

(ii) You are not employed in the role of faculty, research or principal administrative staff; and

(iii) Your regular employment does not depend on the school's academic calendar.

(b) All three criteria must be met in order for your services to be exempt from the provisions of RCW 50.44.050. For example:

(i) You work for Pack Forest (operated by the University of Washington, College of Forest Resources) or one of the extension programs operated by Washington State University. You are not employed in the role of faculty, research or principal administrative staff and your regular employment does not depend on the school's academic calendar. However, the primary purpose of each of these entities is educational. Employment for these entities is subject to the provisions of RCW 50.44.050 regardless of the nature of your employment.

(ii) You work for a radio station that is wholly owned and operated by a college. The primary purpose of the business is other than educational, you are not employed in the role of faculty, research, or principal administrative staff, and your regular employment does not depend on the school's academic calendar. You are not subject to the restrictions of RCW 50.44.050.

## NEW SECTION

**WAC 192-210-045 When does reasonable assurance apply if I work for more than one school?** (1) RCW 50.44.050 prevents the payment of benefits when "any and all" school wages for "any and all" schools for **any** week of unemployment fall between two successive academic terms or during holiday or vacation break periods.

(2) If you receive reasonable assurance for the following academic term from any school, the wages from all schools for whom you worked during the preceding academic term or break will be restricted.

Example: You worked for ABC and XYZ schools during spring 2009. You received reasonable assurance of returning to work during the fall 2009 term from ABC School but not from XYZ School. The wages from both schools must be restricted during the period between academic terms or breaks.

(3) The period during which wages will be restricted begins during the first full week in which any school for which you worked during the preceding academic term is on break and continues through the last full week in which all schools for which you worked during the preceding academic term have resumed a term of instruction.

Example: You worked for ABC and XYZ schools during the 2008-2009 academic year. Summer is not part of the academic year for either school. ABC School's summer break begins June 15, 2009, and ends September 2, 2009. XYZ School's break begins June 22, 2009, and ends September 9, 2009. Your school wages must be restricted from June 14, 2009, through September 5, 2009.

## NEW SECTION

**WAC 192-210-050 Reasonable assurance for substitute teachers--RCW 50.44.050(1).** When deciding whether a substitute teacher has reasonable assurance of returning to work, the department will consider, but is not limited to, the following factors:

- (1) Number of full-time teaching positions;
- (2) Student enrollment;
- (3) Number of schools;
- (4) Size of substitute teacher list at the beginning, during, and end of the academic year or term;
- (5) School district priorities that affect the assignment of substitute teachers; and
- (6) The average number of substitute teachers assigned each day.

NEW SECTION

**WAC 192-210-200 Professional athletes--RCW 50.20.113.** (1) A professional athlete is not eligible for benefits during the period between two successive sports seasons when substantially all of his or her base period wages were earned through participation in professional sports or athletic events and the individual has reasonable assurance of returning to professional sports during the next season.

(2) Definitions: For purposes of this section:

(a) "Substantially all" means ninety percent of the individual's base period wages were earned in professional sports.

(b) "Professional athlete" includes:

(i) A regular player or team player;

(ii) An alternate player;

(iii) An individual in training to become a regular player or team player; and

(iv) An individual who, although not performing active sports, is retained as a player or team member while recuperating from illness or disability.

"Professional athlete" does not include ancillary personnel such as managers, coaches, and trainers involved with the team or sporting event.

(3) Reasonable assurance exists when the individual has:

(a) A written or verbal multiyear contract which extends into the subsequent season; or

(b) Offered to work and the employer has expressed interest in hiring the athlete for the next season; or

(c) Expressed a readiness and intent to participate in the sport for the next season.

